

REMARKS

This application has been reviewed in light of the Office Action mailed June 19, 2007.

Reconsideration of this application in view of the below remarks is respectfully requested.

Claims 1 – 5, 9 – 15, 19, 20 and 22 – 23 are pending in the application with Claims 1, 9 – 13 and 20 being in independent form. By the present amendment, Claims 9 and 19 are amended. No new subject matter is introduced into the disclosure by way of the present amendment.

Initially, Applicants submit that the present application is related to co-pending U.S. Patent Application No. 10/506,091.

I. Rejection of Claim 9 Under 35 U.S.C. § 101

Claim 9 is rejected under 35 U.S.C. § 101, because the claimed invention is allegedly directed to non-statutory subject matter. Specifically, the Examiner contends that Claim 9 defines a computer readable code embodying functional descriptive material, but fails to recite a computer readable medium or memory.

However, the “Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility”, published November 22, 2005, (hereinafter, “Interim Guidelines”) clearly considers such a claim to be statutory matter.

The Interim Guidelines are clear in stating: “a finding that a claim fails to recite a computer-implemented process is not determinative in whether that claim passes muster under sec. 101. Therefore, USPTO personnel should no longer rely on the machine implemented test to determine whether a claimed invention is directed to statutory subject matter.” (See: Interim Guidelines, Annex III(d), para. 4).

However, that being said, Claim 9 and 19, which shares similar language, have been amended to conform to standard practice, and thus recite: “[A]n image description software

product embodied on a computer-readable medium, said software product having instructions executable on a computer for performing the steps comprising..."

Accordingly, Applicants respectfully request withdrawal of the rejection with respect to Claim 9 under 35 U.S.C. § 101.

II. Rejection of Claims 1 – 3 and 9 – 10 Under 35 U.S.C. § 102(b)

Claims 1 – 3 and 9 – 10 are rejected under 35 U.S.C. § 102(b) as allegedly anticipated by U.S. Patent No. 6,052,492 issued to Bruckhaus.

The Examiner contends that Bruckhaus discloses an image description system (FIG.1 – 3) comprising a feature extracting unit (FIG. 2, 215) extracting color layout features from respective frames of an image sequence; a representative feature calculating unit (FIG. 2, 230) calculating a representative color layout feature representative of the image sequence from a group of color layout features extracted by the feature extracting unit. (See: col. 4, lines 35 – 56, col. 8, lines 24-41 and col. 10, lines 25-46).

Bruckhaus discloses identifying various features in an image, such as a basketball, shirts, etc. Even though color information may play a part in the identification process, Bruckhaus does not, however use this color information to calculate a representative color layout feature representative of the image sequence from a group of layout features of all frames extracted. Rather, Bruckhaus discloses that the unit extractor extracts all the units, i.e., an integral set of pixels representing a single physical object in a frame. Of these extracted units, a plurality of the most predominant units is composited into a representative image. (See: FIG. 4 – 6b). Thus, the so-called representative feature calculating unit of Bruckhaus calculates the predominance of a physical feature, i.e., hat, basketball, etc, across all the frames and then combines the two objects having the highest predominance factor into a representative image of the video sequence.

In contrast, Applicants' recited feature extracting unit extracts color layout features, which are defined in the disclosure as, for example, 6 parameters of luminance and 3 parameters of color difference. (See: Applicants' page 24, lines 8 – 21). Thus, it is clear that the color layout features of the present invention are not physical objects, but instead color parameters of the frames of an image sequence.

It is well-settled by the Courts that “[A]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.” Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick Company, et al., 730 F.2d 1452, 221 USPQ 481 (Fed. Cir., 1984).

Therefore, as demonstrated above, because Bruckhaus does not disclose each and every element recited in the present claims, Applicants respectfully submit that the rejection has been obviated. Accordingly, Applicants respectfully request withdrawal of the rejection with respect to Claims 1 – 3 and 9 - 10 under 35 U.S.C. § 102(b).

III. Rejection of Claims 12 – 15, 22 and 23 Under 35 U.S.C. § 102(e)

Claims 12 – 15, 22 and 23 are rejected under 35 U.S.C. § 102(e) as allegedly anticipated by U.S. Patent No. 6,400,890 issued to Nagasaka et al.

As with Bruckhaus, Nagasaka et al. fails to disclose calculating a representative color layout feature representative of the image sequence from a group of layout features of all frames extracted. Rather, Nagasaka discloses a frame feature extractor that extracts a feature from each frame and assigns the extracted feature to represent the frame from which it was extracted. Thus, the extracted feature is not calculated to represent an image sequence. In addition, the features that are extracted are not color layout features; rather as described in col. 14, line 37 – col. 15,

line 30, these features may be physical objects, such as a person, camera work and special effects. No mention is made of color layout features in Nagasaka et al.

Therefore, as demonstrated above, because Nagasaka et al. does not disclose each and every element recited in the present claims, Applicants respectfully submit that the rejection has been obviated. Accordingly, Applicants respectfully request withdrawal of the rejection with respect to Claims 12 – 15, 22 and 23 under 35 U.S.C. § 102(e).

IV. Rejection of Claims 4 and 5 Under 35 U.S.C. § 103(a)

Claims 4 and 5 are rejected under 35 U.S.C. § 103(a) as allegedly obvious over Bruckhaus in view of Nagasaka et al.

Since both Bruckhaus and Nagasaka et al. fail to disclose or suggest calculating a representative color layout feature representative of the image sequence from a group of layout features of all frames extracted, as recited in independent Claim 1 from which Claims 4 and 5 depend, the combination of these references fails to disclose or suggest all the limitations recited in Claims 4 and 5 as well.

Therefore, for at least the reasons given above, Claims 4 and 5 are believed to be allowable over the cited prior art references. Accordingly, Applicants respectfully request withdrawal of the rejection with respect to Claims 4 and 5 under 35 U.S.C. § 103(a) over Bruckhaus in view of Nagasaka et al.

CONCLUSIONS

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims presently pending in the application, namely, Claims 1 – 5, 9 – 15, 19, 20 and 22 – 23 are believed to be in condition for allowance and patentably distinguishable over the art of record.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to call Applicant's undersigned attorney at the number indicated below.

Respectfully submitted,


Paul J. Esatto, Jr.
Registration No. 30,749

SCULLY, SCOTT, MURPHY & PRESSER, P.C.
400 Garden City Plaza - Ste. 300
Garden City, New York 11530
(516) 742-4343

PJE:DAT